

From: Andy
To: Microsoft ATR
Date: 1/23/02 2:53pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotelly,

I am displeased with the direction of the MS anti-trust case. With the pending settlement it seems that many of the most pertinent issues will not be handled adequately.

Quoting Dan Kegel:

"The PFJ prohibits certain behaviors by Microsoft towards OEMs, but curiously allows the following exclusionary practices:

Section III.A.2. allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

Section III.B. requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs, including important regional 'white box' OEMs, if they offer competing products.

Section III.B. also allows Microsoft to offer unspecified Market Development Allowances -- in effect, discounts -- to OEMs. For instance, Microsoft could offer discounts on Windows to OEMs based on the number of copies of Microsoft Office or Pocket PC systems sold by that OEM. In effect, this allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas, such as office software or ARM-compatible operating systems.

By allowing these practices, the PFJ is encouraging Microsoft to extend its monopoly in Intel-compatible operating systems, and to leverage it into new areas."

To me this is unacceptable. Because of Microsoft's market position, allowing them to retaliate against an OEM for shipping a competing Operating System but no Microsoft operating system virtually determines that no OEM will be willing to do so. Because of Microsoft's monopoly, it would in fact be suicide for any consumer PC distributor to defy Microsoft. In particular these rules are extremely inept at protecting small business from further damage.

Thank You for your time,

Andy Somerville

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